RECEIVED
SEP 13 1977
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. ~~1194~~ 77-441

JIMMY CARROLL DICK,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

Kenn Bradley
Attorney for Petitioner
4815 S. Harvard #138
Tulsa, Oklahoma 74135

40

TABLE OF CONTENTS

Opinions Below..... 2

Jurisdiction..... 2

Statute Involved..... 2

Questions Presented..... 3

Statement of Case..... 3

Reasons for Granting Writ..... 6

Conclusion..... 7

Appendix A..... App. A-1

Appendix B..... App. B-1

TABLE OF CASES

Shields v. United States 17 F.2d 66, 47 S.Ct. 478, 273 U.S. 583..... 6

Doherty v. United States 230 F.2d 605. 6

Esters v. United States 260 F.2d 393.. 7

Sykes v. United States 204 F. 909..... 7

United States v. Haderlein 118 F. Supp. 346..... 7

APPENDICES

Opinion of the United States Court of Appeals Tenth Circuit of July 25, 1977..... App. A-1

Judgment Order of the United States District Court for the Northern District of Oklahoma of August 20, 1976..... App. B-1

STATUTES AND FEDERAL RULES

Federal Rules of Criminal Procedure Rule 32(c)(2), 18 U.S.C.A..... 2

Title 18, U.S.C. §3577..... 2

Federal Rules of Criminal Procedure Rule 32(c)(1)..... 2

Title 18, U.S.C. §371..... 2

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. A-194

JIMMY CARROLL DICK,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Jimmy Carroll Dick, the petitioner herein, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals, Tenth Circuit, entered in

the above entitled case on July 25, 1977.

OPINIONS BELOW

The opinion of the United States Court of Appeals, Tenth Circuit, is reported 76-1936, and is printed in Appendix A hereto, infra, page A-1. The judgment of the United States District Court for the Northern District of Oklahoma is printed in Appendix B hereto, infra, page B-1.

JURISDICTION

The judgment of the United States Court of Appeals, Tenth Circuit, was entered on July 25, 1977. The jurisdiction of the Supreme Court of the United States is invoked under:

1. Federal Rules of Criminal Procedure Rule 32(c)(2), 18 U.S.C.A.

2. Title 18, U.S.C. §3577.

3. Federal Rules of Criminal Procedure Rule 32(c)(1).

STATUTE INVOLVED

Title 18, U.S.C. §371

QUESTIONS PRESENTED

1. To determine guidelines for requiring corroboration of the testimony of an impeached accomplice upon whose testimony the government relies for conviction.

2. To determine the sufficiency of the evidence upon which a conviction was based in this case.

STATEMENT OF CASE

On or about May 25, 1976, agents of the United States Secret Service arrested one Roger Vaughan at Avant, Oklahoma, and recovered from his possession $192,000 in counterfeit twenty-dollar United States Reserve notes. Upon his arrest, Roger Vaughan made several conflicting statements to the agents implicating Petitioner and others in a conspiracy to manufacture, transfer and distribute the counterfeit notes.

At the trial of this case, Roger Vaughan was the chief witness presented by the United States Government against Petitioner.

Mr. Vaughan testified that in early January 1976, he operated a bar in Avant, Oklahoma. At this time, Petitioner was an occasional patron of the bar, and during one of Petitioner's visits to the bar, Mr. Vaughan engaged Petitioner in a conversation concerning counterfeit money.

Mr. Vaughan claimed to have had several years of experience in the printing business, and knew various people who would help in printing the counterfeit money. Other discussions followed from which a basic plan was developed whereby Petitioner would furnish certain money to Roger Vaughan for the purpose of obtaining the counterfeit notes, and the proceeds derived from the distribution of the counterfeit notes would be divided between Mr. Vaughan, Petitioner and others allegedly involved in the conspiracy. In March 1976, Mr. Vaughan traveled to California where he met with one Richard Arlin Brown who agreed to manufacture the counter-

feit notes. In May 1976, Mr. Vaughan testified that he and Petitioner traveled to California where they obtained possession of the counterfeit notes and returned them to the State of Oklahoma. Mr. Vaughan also testified that while he and Petitioner were in California, they stayed at the Sea Horse Motel at Manhattan, California.

Agents of the United States Secret Service testified that the $192,000 in United States Reserve Notes recovered from Roger Vaughan was in fact counterfeit. One of the agents identified and introduced, over Petitioner's objection, a registration form from the Sea Horse Motel in Manhattan, California, signed by Roger Vaughan, and indicating two occupants of the room in question.

Other witnesses testified as to the actions of other alleged co-conspirators involved in this case, but there was no other evidence introduced against Petitioner.

REASONS FOR GRANTING WRIT

1. To determine the guidelines for requiring corroboration of the testimony of an impeached accomplice upon whose testimony the government relies for conviction.

2. To determine the sufficiency of the evidence upon which the conviction was based in this case.

At best the testimony of a co-conspirator is not entitled to the same credit as the testimony of other witnesses - SHIELDS v. UNITED STATES 17 F.2d 66, 47 S.Ct. 478, 273 U.S. 583. Such testimony should be received and weighed with great caution - DOHERTY v. UNITED STATES 230 F.2d 605.

Although the uncorroborated testimony of an accomplice is sufficient in some circumstances to sustain a conviction, corroboration is necessary where there are additional circumstances which throw suspicion upon such testimony. Where the testimony of the accomplice is contradictory, inconsistent,

or where the witness has sworn falsely to a material matter. ESTERS v. UNITED STATES 260 F.2d 393, SYKES v. UNITED STATES 204 F. 909, and UNITED STATES v. HADERLEIN 118 F. Supp. 346.

CONCLUSION

Conviction in this case rests solely upon the uncorroborated testimony of an admitted accomplice who was thoroughly impeached. In many jurisdictions, such evidence would be insufficient to submit the cause to the jury. However, in the Federal Court system, no definitive guidelines are available for determining the necessity of corroboration for the testimony of an accomplice who has been impeached. It is Petitioner's belief that the fact situation in this case merits consideration by the Supreme Court of the United States for the purpose of setting definitive guidelines for requiring corroboration of the testimony of an impeached accomplice.

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Kenn Bradley
Attorney for Petitioner
4815 S. Harvard #138
Tulsa, Oklahoma 74135

PROOF OF SERVICE

I hereby certify that I served a full, true and correct copy of the Petition for Writ of Certiorari and Appendices attached thereof to the United States Attorney for the Northern District of Oklahoma, Federal Bldg., Tulsa, Oklahoma, and to the Solicitor General of the United States, Washington, D. C. 20543.

Kenn Bradley

NOT FOR ROUTINE PUBLICATION
(See Local Rule No. 17)

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Nos. 76-1936 and 77-1094

UNITED STATES OF AMERICA,	)	Appeal from
	)	the United States
Plaintiff - Appellee,	)	District Court
	)	for the Northern
vs.	)	District of Okla-
	)	homa (D. C. No.
JIMMY CARROLL DICK and	)	76-CR-78)
ROBERT LEE DICK, JR.,	)	
	)	
Defendants-Appellants.	)	

Submitted on Briefs

Nathan G. Graham, United States Attorney, Hubert A. Marlow, Acting United States Attorney, and Ben F. Baker, Assistant United States Attorney, for Plaintiff-Appellee.

Terry L. Meltzer and Kenn Bradley, for Defendants-Appellants.

Before SETH, McWILLIAMS, and BARRETT, Circuit Judges.

McWILLIAMS, Circuit Judge.

Robert Lee Dick and his brother, Jimmy Carroll Dick, appeal their respective convictions for conspiring to manufacture, possess, sell, transfer, conceal and utter counterfeit Federal Reserve Notes of $20 denominations in violation of 18 U.S.C. §§ 371, 471, 472 and 473. These two appeals have been separately briefed, but are consolidated for the purposes of this opinion.

Both appellants challenge the sufficiency of the evidence and Jimmy Carroll Dick additionally urges as grounds for reversal the admission into evidence of Government's exhibit No. 3. Our study of the record leads us to conclude that the evidence is legally sufficient to tie these two defendants into the conspiracy, and that there was no error in admitting into evidence exhibit No. 3. We therefore affirm both convictions.

The Dick brothers were jointly charged and tried with several others, one of whom was one John Paul Long. The latter perfec-

ted an appeal, and we affirmed his conviction in an unpublished opinion, United States v. Long, our No. 76-2188. The reader of this opinion is directed to Long for general background facts. It is sufficient for present purposes to note that the two Dick brothers and one Roger Ray Vaughan, the latter a former printer who more recently was proprietor of the Mother's Bar in Avant, Oklahoma, conspired to have counterfeit currency printed in California, which was later to be passed in Oklahoma and surrounding states. Vaughan was experiencing financial difficulties and was in need of money. The Dick brothers were to put up the initial money necessary to have the counterfeit notes printed, and presumably were to later share in the profits. Jimmy Carroll Dick advanced monies to Vaughan, part of which he apparently obtained from his brother Robert Lee Dick. Jimmy Carroll Dick also accompanied Vaughan on the last

of Vaughan's three trips to California, where the counterfeit notes were eventually printed. On the last of his trips to California Vaughan, accompanied by Jimmy Carroll Dick, returned with counterfeit twenty dollar United States Reserve Notes having a face value of around $200,000.

Without going into further detail, the evidence in our view is sufficient to tie both of the Dick brothers into the conspiracy. Vaughan, an unindicted co-conspirator who pled guilty to another charge, testified as a Government witness and his testimony was such as to implicate both of the Dick brothers. The jury was properly instructed concerning the testimony of an accomplice, and apparently chose to believe Vaughan. The Dick brothers did not themselves testify, and they cannot now successfully complain because the jury accepted Vaughan's version of events. At this state of the proceedings the evidence must be

viewed in a light most favorable to the prosecution. United States v. Moore, __ F.2d__ (10th Cir. 1977) and United States v. Martin, 526 F.2d 485 (10th Cir. 1975). Viewed in that light, the evidence is legally sufficient to sustain both convictions here sought to be reversed.

As indicated, Vaughan, the unindicted co-conspirator, testified that Jimmy Carroll Dick accompanied him to California on his third and last trip to California when he obtained the $200,000 in bogus currency. According to Vaughan, they drove to California in Jimmy Carroll Dick's car and checked into the Seahorse Motel at Redondo Beach, California. Vaughan further testified that he had signed the registration card at the motel. The Government's exhibit No. 3 purported to be the registration card signed by Vaughan at the Seahorse Motel. A special agent of the Secret Service testified that he had received exhibit No.

3 from the manager of the Seahorse Motel. Vaughan testified that the signature on exhibit No. 3 appeared to be his. With such identification exhibit No. 3 was received into evidence, over objection. It is counsel's position that since no one from the Seahorse Motel identified the exhibit, it should not have been received into evidence. We do not agree.

The manager of the Seahorse Motel could of course have testified concerning the exhibit and how the motel records were kept. But this is not the only method by which the registration card could be authenticated. The Secret Service agent testified that he obtained the card from the motel manager. And Vaughan identified the signature on the card as his. Rule 901(a), Fed. Rules Evid. provides that the requirement of authentication or identification is satisfied by evidence sufficient to support a finding that "the matter in question is

what its proponent claims." That test has in our view been met.

The relevancy and materiality of the exhibit is that it tended to corroborate Vaughan's testimony that there were two individuals who checked into the motel. The exhibit did not itself contain either Jimmy Carroll Dick's name or signature, but did establish that there were two persons registered into the room. Additionally, the exhibit tended to corroborate Vaughan's testimony that he made certain telephone calls from the motel. We find no error in the admission of exhibit No. 3.

Judgments affirmed.

UNITED STATES DISTRICT COURT FOR
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	Docket No. 76-CR-78
JIMMY CARROLL DICK, Defendant.	)	

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this 20th day of August, 1976 with his counsel Terry L. Meltzer, retained.

There being a verdict of guilty defendant has been convicted as charged of the offense of having violated T. 18, U.S.C. Section 371, as charged in the Indictment.

The Court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and

ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Three (3) Years. It is further ordered that the defendant may become eligible for parole at such time as the U. S. Parole Commission may determine as provided in T. 18, U.S.C.A., Section 4205(b)(2).

s/U. S. Magistrate
8-20-76